

Association of



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MEMO

TO: U.S. Departments of Labor, Health and Human Services, and the Treasury
Via email: E-OHPSCA-FAQ39@dol.gov

FROM: Dr. Gina Green, Chief Executive Officer, Association of Professional Behavior Analysts

RE: [Proposed] FAQs About Mental Health and Substance Use Disorder Parity Implementation and the 21st Century Cures Act Part XX

Thank you very much for the opportunity to submit comments on the above-referenced draft FAQs. By way of introduction, the Association of Professional Behavior Analysis (APBA) is a nonprofit professional organization whose mission is to promote and advance the practice of applied behavior analysis (ABA). A major component of that mission is working on public policies affecting that practice and consumers' access to ABA services. That work has encompassed laws and regulations governing coverage of ABA services for people with autism spectrum disorder (ASD) and related conditions by public and private health plans all over the U.S. It is from that perspective that we applaud the Departments for providing guidance regarding nonquantitative treatment limitations (NQTs) for implementation of the Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA). In particular, we are gratified to see that one of the items in the proposed FAQs – Q2 – addresses health plan coverage of ABA interventions for people diagnosed with ASD. We concur with the language in the proposed answer to Q2 indicating that it is a violation of MHPAEA for health plans to deny claims for ABA interventions for people with ASD based on the false contention that those interventions are experimental or investigative.

We respectfully suggest that some revisions would greatly improve the accuracy of information in both the question and the response. For instance, the draft states incorrectly that ABA is a “therapy,” and that ABA interventions are effective only for “...certain children with Autism Spectrum Disorder.” Rather, behavior (not “behavioral”) analysis is a scientific discipline. The applied branch of the discipline (ABA) uses principles and procedures discovered through basic and applied research to improve socially significant behavior to a meaningful degree. Thousands of studies published in peer-reviewed scientific journals have demonstrated the efficacy of many ABA procedures – singly and in various combinations – for building skills and reducing behaviors that jeopardize health, safety, and independent functioning in many clinical and non-clinical populations. Included in that large body of research are numerous studies documenting the beneficial effects of comprehensive and focused ABA interventions for people with ASD *of all ages* (comprehensive ABA interventions address core symptoms, maladaptive behaviors, and adaptive behaviors in multiple domains; focused interventions address a small number of maladaptive and/or adaptive behaviors).

In light of the foregoing, we strongly recommend revising the second paragraph of Q2 to read as follows:

The plan defines autism spectrum disorder as a mental health condition. Several professionally recognized treatment guidelines and scores of controlled studies using a range of research designs, including several randomized clinical trials, support the use of applied behavior analysis (ABA) interventions to treat children, youths, and adults with autism spectrum disorder and related conditions. For the most recent plan year, the plan denied all claims for ABA interventions for people with autism spectrum disorder based on the premise that those interventions are experimental or investigative. The plan approved medical and surgical interventions that were supported by one or more professionally recognized treatment guidelines and two or more randomized clinical trials. Is its denial of coverage for ABA interventions permissible?

We also recommend making parallel revisions in the response to Q2 starting with the third full sentence, so that it reads as follows:

Although the plan as written purports to exclude experimental or investigative treatment for both MH/SUD and medical/surgical benefits using the same standards, in practice the plan imposes that exclusion more stringently on MH/SUD benefits when it denies all claims for ABA interventions despite the fact that professionally recognized treatment guidelines and the requisite number of scientific studies support the use of those interventions to treat children, youths, and adults with autism spectrum disorder. The plan’s exclusion of ABA interventions as experimental does not comply with MHPAEA because that exclusion constitutes a more stringent application of NQTL to mental health benefits than to medical/surgical benefits.

Your consideration of these comments and suggestions is greatly appreciated. If I can answer any questions or provide additional information, please do not hesitate to contact me at Gina@apbahome.net or ggreen3@cox.net.